IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9035 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARSINHBHAI KANJIBHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR ND NANAVATY SR.COUNSEL for
NANAVATY ADVOCATES for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Surat City, Surat passed an order on November 9, 1999, in exercise of powers under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining

Narsinhbhai Kanjibhai Patel under the provisions of the PASA Act.

#. The detaining authority took into consideration one offence registered against the detenue under the Bombay Prohibition Act and the statements of two anonymous witnesses for coming to conclusion that the petitioner is a "bootlegger" and that his activities are detrimental to public order. The detaining authority observed in the grounds of detention that he has personally verified the correctness and genuineness of the statements and that he is satisfied that the statements are correct and the fear expressed by the witnesses is genuine and therefore, the powers under section 9(2) of the PASA Act are required to be exercised of not disclosing the identity of the witnesses.

2.1 The detaining authority considered the possibility of resorting to less drastic remedies and ultimately came to conclusion that in order to immediately preventing the petitioner from resorting to illegal and anti-social activities, he is required to be detained under the PASA Act.

#. The petitioner challenges the order of detention on various grounds. However, Senior Counsel Mr. N.D. Nanavati, appearing for the petitioner has assailed the order only on the ground of non - application of mind on the part of the detaining authority. He has drawn attention of this Court to the fact that the detaining authority has observed in the grounds of detention that he has personally verified the statements by personally hearing the witnesses whereas there is no material to indicate this part. On the contrary, the statements appear to have been verified by the sponsoring authority itself who had earlier record the statements. Mr. Nanavati, therefore, submitted that the order is passed in mechanical manner without application of mind and therefore, it would be rendered bad in law. The same may, therefore, be quashed and set aside by allowing this petition.

#. Mr. K.T. Dave, learned AGP has opposed this petition. He submitted that even if the argument advanced by Mr. Nanavati is accepted, it would vitiate the exercise of powers under section 9(2) of the PASA Act. But there is one more ground against the detenue namely an offence registered against the detenue under the Bombay Prohibition Act and therefore, the petition may be dismissed.

#. Considering the rival side contentions, at the outset, it may be noted that here is the case where the entire decision making process appears to have been affected on the account of the non-application of mind on the part of the detaining authority. The detaining authority has, in clear terms observed that he has personally heard the witnesses and has found that the contents of the statements and the fear expressed by them is correct and genuine and therefore, the powers under section 9(2) of the PASA Act are exercised. Against this, if the statements of anonymous witnesses are seen, they are recorded by the Police Inspector, PCB, Surat on October 29, 1999 and October 31, 1999. Out of these two statements, one statement i.e. of the second witnesses, is verified by the Police Inspector, PCB, Surat i.e. the authority who had recorded the statements.

#. In view of what is stated hereinabove, there cannot be any doubt that this is a gross case of non-application of mind on the part of the detaining authority. It is a matter of doubt if the authority has in fact gone through the papers before passing the order and therefore, the entire decision making process creeps under the cloud of doubt and gets vitiated. The argument advanced by learned AGP that the registered offence against the detenue would still remain as a ground cannot be accepted in the fact of the present case and in light of the above observations of this Court. The petition therefore, deserves to be allowed.

#. The same is allowed. The impugned order of detention dated 9th November, 1999 is hereby quashed and set aside. The detenue - Narsinhbhai Kanjibhai Patel is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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